

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

UNITED STATES OF AMERICA	§	
v.	§	CRIMINAL NO. 6:04CR98(1)
TODD POTOCZAK	§	

REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE

This Report and Recommendation is submitted to the Court pursuant to 28 U.S.C. § 636(b)(3). This case has been referred by the Honorable Leonard Davis to the undersigned Magistrate Judge for the taking of a felony guilty plea. The parties have consented to appear before a Magistrate Judge.

The defendant and counsel appeared before the undersigned United States Magistrate Judge who addressed the defendant personally in open Court and informed the defendant of, and determined that the defendant understood, the admonishments under Rule 11 of the Federal Rules of Criminal Procedure.

The defendant pled guilty, pursuant to a plea bargain agreement with the Government to Counts Five and Ten of the Superseding Indictment.

The undersigned Magistrate Judge finds the following:

- 1) The defendant, with the advice of his attorney, has consented orally and in writing to enter this guilty plea before a Magistrate Judge subject to final approval and sentencing by the presiding District Judge;
- 2) The defendant fully understands the nature of the charges and penalties;

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- 3) The defendant fully understands the terms of the plea agreement;
- 4) The defendant understands his constitutional and statutory rights and wishes to waive these rights, including the right to a trial by jury and the right to appear before a United States District Judge;
- 5) The defendant's plea is made freely and voluntarily;
- 6) The defendant is competent to enter this plea of guilty;
- 7) There is a factual basis for this plea; and
- 8) The ends of justice will be served by acceptance of the defendant's plea of guilty.

Recommendation

Accordingly, it is hereby RECOMMENDED that the District Judge accept the plea of guilty and enter final judgment of guilty against the defendant. This Report and Recommendation supersedes the Report and Recommendation issued on June 8, 2005 (Doc. #141). Accordingly, it is RECOMMENDED that the previously issued Report and Recommendation be vacated.

A party's failure to file objections to the findings, conclusions, and recommendations contained in this Report within ten days after service with a copy thereof shall bar that party from *de novo* review by the district judge of those findings, conclusions and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

SIGNED this 6 day of September, 2005.